

A Guide To

Special Education

ADMINISTRATIVE

COMPLAINTS

In Tennessee

July 1, 2007

A Guide to Special Education Administrative Complaints in Tennessee

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A Guide to Special Education Administrative Complaints in Tennessee

As provided for under the Individuals with Disabilities Education Act (IDEA) and Tennessee State Board of Education rules and regulations, there are three (3) dispute resolution options available to help resolve issues related to special education: Administrative Complaint, Mediation, and Due Process Hearing. Information concerning these three (3) dispute resolution options is contained in the booklet entitled “Rights of Children with Disabilities and Parent Responsibilities” which is available online at: www.state.tn.us/education/speced.

This document will detail the Administrative Complaint process. The entire process is explained and many frequently asked questions are answered. Appendices at the end of this document contain additional information.

If you have questions about anything in this document or anything concerning your child’s education, you are encouraged to contact the Tennessee Department of Education/Division of Special Education at (615) 741-2851 or 1-888-212-3162 for assistance and guidance.

Before Filing the Administrative Complaint

Before filing an Administrative Complaint with the Tennessee Department of Education/Division of Special Education, there are a few things a concerned person may do that might resolve concerns more quickly, while at the same time strengthening the working relationship between the concerned person and the school system.

The following items are recommended as a “checklist” of steps to follow before filing an Administrative Complaint:

- ✓ Contact the teacher or service provider and discuss the concerns
- ✓ Notify the principal and request his/her assistance
- ✓ Request an IEP team meeting
- ✓ Contact the Special Education Director/Supervisor of the school system and make them aware of the concerns and update them on the results of any contact with the teacher, principal, etc.
- ✓ Call the Tennessee Department of Education/Division of Special Education and ask to speak with the Compliance Consultant in charge of Administrative Complaints for the school system

If a local resolution to the concerns is not achieved, the Compliance Consultant will assist the concerned person in filing an Administrative Complaint.

Filing the Administrative Complaint

Even though the regulations state that an Administrative Complaint must be in writing, the Department of Education realizes that there may be a situation where a person is unable to put his/her concerns in writing, or have a friend or family member do it for them. In these rare instances, it is possible to make a verbal complaint directly to a Compliance Consultant over the telephone.

An Administrative Complaint should be filed in writing and signed by the person making the complaint. Administrative Complaints may be filed via e-mail. The Tennessee Department of Education has an Administrative Complaint form that a Compliance Consultant will send to anyone requesting a copy. The form is also available on the Internet on the Tennessee Department of Education/Division of Special Education's web site at www.state.tn.us/education/speced/selegalservices.htm.

A person making a complaint may wish to use the back of the form for additional information, or even attach additional pages that they have written to express their concerns. Sometimes, a personal letter will serve as an Administrative Complaint, but this may make identifying valid complaint issues more difficult. Copies of any documents that support the allegation of a violation should be sent as well. A good rule of thumb when filing a complaint is to follow up with a telephone call to a Compliance Consultant to verify receipt and discuss the complaint.

After Filing the Administrative Complaint

When speaking with a Compliance Consultant, he/she will answer any questions the person making the complaint may have and further explain the following Administrative Complaint process to them:

- ✧ The person making the complaint will be sent a letter acknowledging that the Tennessee Department of Education/Division of Special Education has received the Administrative Complaint
- ✧ This letter invites them to send any additional information or documentation to the Tennessee Department of Education/Division of Special Education, if they think that it would be related to the complaint or the investigation
- ✧ A letter with a copy of the complaint will be sent to the Director of Schools and the Special Education Director/Supervisor of the school system, the Coordinator of the Department of Education Regional Resource Center that serves the school, the Department of Education Management and Monitoring personnel that serve the school, and a copy will be maintained in the Compliance Consultant's files
- ✧ Both of these letters will state that, by law, Administrative Complaints have a timeline of sixty (60) calendar days from receipt of the complaint to conclusion.
- ✧ The school system letter will also explain to the school system what they must provide to the Tennessee Department of Education/Division of Special Education

Administrative Complaint Investigation Procedures

The Division of Special Education will begin an investigation into the complaint. The investigation may include: requests for additional written information from the person making the complaint or the school system; telephone conversations with the person making the complaint or the school system; a visit to the school, if deemed appropriate; and gathering of evidence or documentation in whatever manner is deemed appropriate

If the complaint alleges that a school system has committed a procedural violation of the IDEA, the Division will determine whether the allegations in the complaint have a basis in fact. If the allegations are determined to have a basis in fact, the Division will issue, within ten (10) regular school business days of the finding, a letter to the school system and the person making the complaint confirming the violation alleged in the Complaint. The letter will state whether or not the Division has determined that the procedural violation has resulted in a substantive denial of a free, appropriate public education. Procedural violations of the IDEA that do not result in a substantive denial of a free appropriate public education must be corrected by the school system the violation within ten (10) regular school business days of notification.

If the complaint alleges that a school system has committed a substantive violation that amounts to a denial of a free, appropriate public education, the Division will issue, within ten (10) regular school business days of the finding, a letter to the school system and the person making the complaint confirming the violation and requiring the school system to take corrective action, including compensatory education where appropriate. If a school system has committed a violation that is determined to constitute a violation of a free, appropriate public education, it must correct the violation within ten (10) regular school business days. If the school system is unable to correct the violation within ten (10) regular school business days of notification, despite its diligent efforts, it will be granted an extension of time for a reasonable period, not to exceed an additional ten (10) regular school business days to correct the violation.

A school system that receives a letter from the Division indicating that measures are required to correct procedural or substantive violations of the IDEA, must provide a letter describing the corrective measures to the Division and to the person making the complaint. The Division will determine whether the measures taken by the school system have resulted in compliance with the IDEA. The Division will provide written notice to the school system of its determination within ten (10) regular school business days.

Violations Posted on Website

Within thirty (30) business days after closing the investigation, the Division will publish all confirmed violations and determinations of findings of violations of the IDEA on the Tennessee Department of Education's Special Education web site at www.state.tn.us/education/speced. The information will include the name of the school system, a description of the violation, a citation of the law or regulation determined to have been violated, the corrective measures proposed by the school system, and the final determination of the Division of Special Education. Information that would allow the child to be identified will be redacted prior to publishing on the website.

Frequently Asked Questions

Does an Administrative Complaint have to be written?

The regulations state that it does; however, if circumstances prevent a person with a concern from filing an Administrative Complaint in writing, a Compliance Consultant may take it over the telephone or in some other appropriate way.

Can an Administrative Complaint be faxed to a Compliance Consultant?

Yes. Even letters or e-mail complaints are treated as Administrative Complaints, if they contain all the required elements and information, and specify that they are a complaint.

Are Administrative Complaints ever resolved earlier than the sixty (60) calendar day timeline?

Yes. If the investigation is concluded and the school system has responded to the complaint, it is possible that the Complaint may be resolved sooner than the sixty (60) calendar day deadline.

You received a letter that talks about “No Jurisdiction”. What does that mean?

Issues that do not relate to federal or state regulations for special education are said to be “non-IDEA” issues. These are issues that are outside the jurisdiction of an Administrative Complaint. In other words, there is no special education regulation that applies to the issue. Examples would be: General Education issues, teacher assignment, promotion/retention, personnel, allegations of acts occurring more than one year prior to filing of the Administrative Complaint, etc.

When a person making a complaint submits an Administrative Complaint that is composed entirely of issues that are not related to special education, he/she would receive a “letter of no jurisdiction” explaining that their concerns could not be addressed through the Administrative Complaint process.

Some complaints contain special education-related issues plus some issues not related to special education. In those instances, the special education issues would be properly investigated and the Closure Letter would explain which issues were “no jurisdiction” issues.

Can someone who is not the parent of the child file an Administrative Complaint?

Yes. A parent, other concerned individual, or an organization may file an Administrative Complaint. However, a person or organization, other than the parent, making a complaint would need to provide a signed release of information form from the parent of the child before any information related to the child could be released to them.

Sometimes, advocates assist parents in writing/filing an Administrative Complaint. The advocate would need to have a signed release of information from the parent, as well.

What can a person do if they don't like the outcome of an Administrative Complaint?

Either the person making the complaint or the school system can send in more evidence. The Compliance Consultant will evaluate this new evidence and, the original decision may be revised, or may remain unchanged.

If either party has sent new evidence and the result is the same, or if they have no new evidence, they still have the right to request Mediation or a Due Process Hearing on the same issue(s).

You went to Mediation first and did not reach agreement; can you file an Administrative Complaint on the same issue?

Yes. But remember an Administrative Complaint issue must allege a violation of an applicable rule or regulation.

You reached agreement at Mediation, but one of the parties is not following the agreement. Can you file an Administrative Complaint because they are not following the agreement?

The appropriate course of action would most likely be to request a Due Process Hearing. Either party could request a Due Process Hearing and the Administrative Law Judge could enforce the Mediation agreement.

Can you file an Administrative Complaint on an issue that has been part of a Due Process Hearing that the Administrative Law Judge ruled on?

No. Once an issue has been ruled on by an Administrative Law Judge, that issue cannot be taken to Mediation or filed as an Administrative Complaint.

Can you file multiple Administrative Complaints close to one another?

Yes, but they will most likely be appended to the original complaint making one (1) complaint with multiple issues. This could benefit the person making the complaint, in that the issue that was submitted after the original complaint would be resolved according to the sixty (60) calendar day timeline applied to the original complaint. In other words, it would be resolved more quickly than if it were submitted as a separate complaint.

If it is far enough into the sixty (60) calendar day timeline that it would be impractical to append an issue to the original complaint, a new complaint is created and a new sixty (60) calendar day timeline begins for the new complaint.

Can you file an Administrative Complaint in the summer?

Yes. It is best to file an Administrative Complaint as soon after a person becomes concerned as possible. If a concern arises at the end of the school year or during ESY (Extended School Year), or if a concern from earlier in the school year does not improve by the end of school, it would be appropriate to file an Administrative Complaint in the summer.

School system administrators work eleven (11) or twelve (12) months and respond to complaints year round.

Don't put it off. Administrative Complaints have a one year statute of limitation. Contact a Compliance Consultant when a concern first appears by calling (615) 741-2851 or 1-888-212-3162. Many times, answers to questions or advice as to how to address concerns will help keep a concern from becoming an Administrative Complaint issue.

Does Tennessee Department of Education/Division of Special Education personnel ever attend IEP meetings? If they do attend, what is their role at the meeting?

Yes. If either the parent or the school system requests Tennessee Department of Education/Division of Special Education personnel to attend an IEP meeting, every effort is made to send someone. Adequate advance notice is needed. Requests may be made by calling (615) 741-2851 or 1-888-212-3162.

Tennessee Department of Education/Division of Special Education personnel act as a "resource" at IEP meetings. They are available to answer questions related to the law and regulations and to ensure that all applicable regulations/procedures are followed during the meeting.

By working to ensure that the rights of the parent and child are respected, and the law and regulations are enforced, the Division is attempting to be fair and impartial to all parties. The ultimate "winner", if one must be identified, is the child.

Issues That May Not Be Addressed By an Administrative Complaint

An IEP team makes many decisions that affect a student's education. There are; however, many decisions that an IEP team does not have the responsibility or ability to decide. These are "administrative decisions" and are made by the school system.

One of the required participants at an IEP meeting is a LEA representative. This is usually the principal or his/her designee. This LEA representative must be able to make decisions for the school system during the IEP meeting. Sometimes, a LEA representative will make "administrative decisions" during an IEP meeting. It may appear that the IEP team made the decision, but the LEA representative is making the "administrative decision" on behalf of the school system, not on behalf of the IEP team.

Examples of "administrative decisions" include:

- ◆ Promotion or Retention
- ◆ Grade Assignment
- ◆ School Assignment
- ◆ Teacher Assignment

There are other issues that may not be addressed by an Administrative Complaint:

Allegations of abuse should be reported to a local law enforcement agency or the Department of Children Services.

Allegations of discrimination or violations of Civil Rights should be reported to your local Title VI, Title IX, or Section 504 Coordinator, or the Office for Civil Rights at (404) 562-6350, unless it was related to the student's disability and special education services.

Additionally, matters that are exclusively under the control of the local school system may not be addressed by an Administrative Complaint. For example: personnel issues and general education issues are the responsibility of the local school system. A concerned party should check with the local school system and request a copy of the local School Board policy regarding filing a complaint or grievance against a school board employee. If a person with a local complaint issue follows the local school board written policy, they may effectively complain locally about any school system employee.

What an Administrative Complaint Can Do

An Administrative Complaint is a way to ensure that the federal and state regulations are followed, that the rights of the parent and the child are being observed, and that the child is receiving all the special education and services that are a part of the IEP.

Many people look at the Administrative Complaint process as being an adversarial process. In reality, it is not a "contest" to see who can "win", but it is a way to ensure that the law is followed. If the law is followed, the child is the "winner".

An Administrative Complaint remedy may require the school system to document completion of certain actions or activities in order to be in compliance with the regulations. Compensatory services may be awarded if services specified in an IEP are not provided to a child. Reimbursement to the parent for services they provided, that were found to be the system's responsibility, may be appropriate as well. Other remedies may be required. An appropriate remedy to an Administrative Complaint depends on the facts pertaining to the complaint.

What an Administrative Complaint Cannot Do

An Administrative Complaint cannot:

- ✗ Get a principal, teacher, bus driver, or other school system employee fired
- ✗ Get a specific person hired
- ✗ Get a student assigned to a specific grade, school, or teacher
- ✗ Get grades changed (unless Modified Grading is a modification in the IEP)

The purpose of an Administrative Complaint is not to "punish" the school system. Parents do not receive punitive damages, nor are school systems fined for violations.

Appendix A – Federal IDEA Regulations

State Complaint Procedures

§300.151 Adoption of State complaint procedures.

- (a) General. Each SEA must adopt written procedures for--
- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--
 - (i) Providing for the filing of a complaint with the SEA; and
 - (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and
 - (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.
- (b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address--
- (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
 - (2) Appropriate future provision of services for all children with disabilities.
- (Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)
- (Authority: 20 U.S.C. 1221e-3)

§300.152 Minimum State complaint procedures.

- (a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--
- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
 - (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--
 - (i) At the discretion of the public agency, a proposal to resolve the complaint; and
 - (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;
 - (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
 - (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the SEA's final decision.
- (b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--
- (1) Permit an extension of the time limit under paragraph (a) of this section only if--
 - (i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including--

- (i) Technical assistance activities;
- (ii) Negotiations; and
- (iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532. (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--

- (i) The due process hearing decision is binding on that issue; and
- (ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1221e-3)

§300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.

(b) The complaint must include--

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child--

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), available contact information for the child, and the name of the school the child is attending;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1221e-3)

Appendix B – Tennessee Public Chapter 598 of the Acts of 2007
Effective July 1, 2007

SECTION 3.

The department of education shall promptly investigate complaints filed regarding services to disabled students and shall enforce the Individuals with Disabilities Education Act and Tennessee special education laws. The department shall carry out its obligation to enforce such laws through the administrative complaint process in the following manner:

- (1) The department shall make available a complaint form on the departmental internet site. In addition, the department shall supply any individual a written copy of the complaint form via the United States mail when so requested. The department shall facilitate the submission of complaint forms via the internet. If a complaint is filed via the internet, the complaint shall be deemed signed so long as the name of the filer is indicated in the complaint. Anonymous complaints shall not be accepted for investigative purposes.
- (2) If the complaint alleges that a school system has committed a procedural violation of the applicable laws, the department shall determine whether the allegation has basis in fact. If determined to have a basis in fact, the department shall issue, within ten (10) regular school business days of the finding, a written finding to the school system and the person making the complaint confirming the violation. The response shall state whether or not the department has determined that the procedural violation has resulted in a substantive denial of a free, appropriate public education.
- (3) If the complaint alleges that a school system has committed a substantive violation that amounts to a denial of a free, appropriate public education, the department shall, within ten (10) regular school business days of the finding, issue a written finding to the school district and the person making the complaint confirming the violation and shall require the school system to take corrective action, including compensatory education where appropriate.
- (4) The department shall require a school system that has committed a procedural violation of applicable law to correct the violation within ten (10) regular school business days.
- (5) The department shall require a school system that has committed a violation that is determined to constitute a violation of a free, appropriate public education to correct the violation within ten (10) regular school business days. If the school system is unable to correct the violation within ten (10) regular school business days of notification, despite its diligent efforts, it shall be granted an extension of time for a reasonable period, not to exceed an additional ten (10) regular school business days to correct the violation.
- (6) Any school system receiving notice from the department that measures are required to correct procedural or substantive violations of applicable law shall provide written notice of such corrective measures to the department and to the person making the complaint. The department shall determine whether the measures taken by the school system has resulted in compliance with

the law and the regulations. The department shall provide written notice to the school system of its determination within ten (10) regular school business days.

(7) Within thirty (30) business days after closing the investigation, the department shall publish all confirmed violations and determinations of findings of violations of statutes or regulations on its official state web site. Such publication shall include the name of the school system, a description of the violation, a citation of the law or regulation determined to have been violated, the corrective measures proposed by the school system, and the final determination of the department. The department shall publish confirmed violations and determinations in a manner that protects the identity of the student.

Appendix C –Letters

Many different letters may be used throughout the course of an Administrative Complaint investigation/resolution.

Compliance Consultants make every effort to ensure that every Administrative Complaint receives the same attention to detail and that correspondence is written in a professional manner.

1. A letter is sent to notify the person making the complaint that it was received and the Administrative Complaint process has begun.
2. A letter is sent to the school system with a copy of the complaint, instructions related to their response, and information about the investigation process.
3. A Closure Letter is issued at the conclusion of the investigation. This is the letter that would specify what, if anything, the system was required to do in order to be in compliance with federal or state regulations.
4. A letter is sent when the issues in an Administrative Complaint cannot be appropriately addressed by the Administrative Complaint process.
5. A letter is sent when a Due Process Hearing has been requested on an issue that has also been submitted in an Administrative Complaint. Being “tolled” means that the Administrative Complaint has to “wait” to see if the Due Process Hearing resolves the issues.
6. A letter is sent to the person who made the complaint, acknowledging that the Compliance Consultant has received additional information from them and has forwarded it to the school system as a part of the original complaint.
7. A letter is sent to the school system with the additional information that was submitted by the person who made the complaint with instructions to consider the additional information as they work toward resolution.
8. A letter is sent to the school system if their response is not received within the sixty (60) calendar day timeline. Sanctions may be imposed if a school system fails to respond.
9. A letter is sent after the school system has completed any tasks that they were required to do in order to be in compliance with federal or state regulations.
10. A letter is sent after either party submits a response to a Closure Letter. A Compliance Consultant reviews any new evidence and determines if a change in the original decision is indicated.

Appendix D - Online Resources

IDEA - www.idea.ed.gov

United States Department of Education - www.ed.gov

Tennessee Code Annotated - www.michie.com/tennessee

Tennessee Dept. of Education Division of Special Education - www.state.tn.us/education/speced

Tennessee State Board of Education - www.state.tn.us/sbe

Disability Law and Advocacy Center of Tennessee - www.dlactn.org

Tennessee Disability Coalition - www.tndisability.org

Tennessee Voices for Children - www.tnvoices.org

Support and Training for Exceptional Parents - www.tnstep.org

The Arc of Tennessee - www.thearctn.org

**To: Office of Legal Services
Tennessee Department of Education/Division of Special Education
7th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243-0380
FAX: 615.253.5567**

Child's Disability

[illegible]

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